

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:
Michael Fody, III

Bky No. 12-45009 (RJK)
Chapter 7

Paul M Gayle-Smith
Plaintiff

Adv. Proc. No. 12-04298

v.

Michael Fody, III
Defendant

ANSWER TO COMPLAINT OBJECTING TO DISCHARGEABILITY OF DEBT

For its Answer to Plaintiff's Complaint ("Complaint"), Defendant Michael Fody, III ("Fody") states and alleges as follows:

1. Accept as hereafter admitted or qualified, Fody denies each purported allegation in the Complaint and leaves the plaintiff to its strict proof thereof.
2. Fody admits Complaint Paragraphs 3, 4 and 5.
3. Fody is without sufficient information to admit or deny Complaint Paragraphs 1, 9 and 14 and so denies the same.
4. As to Complaint Paragraph 2, Fody admits he filed a voluntary petition for bankruptcy but denies the Bankruptcy Case Number is 12-4009.
5. As to Complaint Paragraph 8, Fody admits that during the course of his attorney-client relationship with defendant he surely discussed his assets within the context of his family law case but denies statements or representations were made that these assets would be used to pay defendant's legal fee.
6. Fody denies Complaint Paragraphs 10, 11, 12, 13, 16, 17 and 18.

7. As to Complaint Paragraph 6, Fody admits plaintiff provided legal representation related to family law matters but denies the representation began in December, 2007.

8. As to Complaint Paragraph 7, Fody admits he and plaintiff entered into a written contract but is without sufficient information to admit or deny the rest of the paragraph and so denies the same.

9. Complaint Paragraph 15 does not require a response and so Fody denies the same.

AFFIRMATIVE DEFENSES

10. Plaintiff's Complaint fails to state a claim upon which relief can be granted.

11. Plaintiff's damages, if any, are a result of its own actions or inactions, and its own negligence.

12. Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands, laches, waiver, insufficient service of process and estoppel.

13. Plaintiff's Complaint fails to plead the fraud, misrepresentations and damages with the particularity required by Rule 9 of the Federal Rules of Civil Procedure, made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7009.

14. Pursuant to Federal Rule of Bankruptcy Procedure 7008(b), Defendant hereby puts the plaintiff on notice of its intent to seek attorney's fees under 11 U.S.C. Sec. 523(d) and Federal Rule of Bankruptcy Procedure 9011.

15. As a separate and alternative defense to the Complaint, Fody alleges that the claims contained in the Complaint may be barred by any or all of the affirmative defenses contemplated by Rule 8 of the Federal Rules of Civil Procedure. To the extent plaintiff's claims may be barred by one or more of said affirmative defenses not specifically set forth above and that cannot be determined until Fody has the opportunity to complete discovery, Fody therefore incorporates all such affirmative defenses as if fully set forth herein.

PRAYER FOR RELIEF

WHEREFORE, Fody prays for relief against plaintiff as follows:

1. Dismissing plaintiff's Complaint in its entirety with prejudice; and
2. Awarding Fody all costs, disbursements and attorney's fees allowed by law; and
3. Such other relief that the Court deems just, proper and equitable.

Dated: January 3, 2013

/e/ David M. Burns

David M. Burns #337869
Dave Burns Law Office, LLC
475 Grain Exchange North
301 Fourth Avenue South
Minneapolis, MN 55415
(612) 677-8351

UNSWORN DECLARATION FOR PROOF OF SERVICE

I, David M. Burns, attorney of Michael Fody, III declare that on January 3, 2013, I served an ANSWER TO COMPLAINT OBJECTING TO DISCHARGEABILITY OF DEBT on all filing users of this case by electronic mail via the court's CM/ECF server and by First Class Mail to plaintiff by depositing the same in the U.S. Mail and addressed to:

Paul M Gayle-Smith
Law Offices of Paul M. Gayle-Smith
2961 Sundance Circle
Las Cruces, NM 88011

DAVE BURNS LAW OFFICE, LLC

Dated: January 3, 2013

/e/ David M. Burns

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475 Grain Exchange North
301 Fourth Avenue South
Minneapolis, MN 55415
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Attorney for Defendant